

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division

S. LANE TUCKER
United States Attorney
District of Alaska

MARK A. NITCZYNSKI
United States Department of Justice - ENRD
Environmental Defense Section
999 18th Street; South Terrace, Suite 370
Denver, CO 80202
Phone: (303) 844-1498
Email: mark.nitczynski@usdoj.gov

ELISABETH H. CARTER
United States Department of Justice - ENRD
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
Phone: (202) 598-3141
Email: elisabeth.carter@usdoj.gov

Attorneys for the United States

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

NORTHERN DYNASTY MINERALS LTD.
and PEBBLE LIMITED PARTNERSHIP,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendant.

Case No. 3:24-cv-00059-SLG,
and consolidated cases

JOINT MOTION TO EXTEND BRIEFING SCHEDULE

Plaintiffs Northern Dynasty Minerals and Pebble Limited Partnership (“NDM/PLP”), Iliamna Natives LTD., and Alaska Peninsula Corp.; Defendants; and Intervenor-Defendants (“Movants”) in these consolidated cases jointly move to extend the deadlines for briefing the motions that Plaintiffs in Case No. 3:24-cv-00059-SLG (“NDM/PLP”) recently filed regarding the administrative record of the United States Army Corps of Engineers (Corps”).¹ Specifically, Movants seek to: (a) extend until February 14, 2025, the deadline for oppositions to PLP’s Motion to Complete or Supplement the United States Army Corps of Engineers’ Administrative Record (“Motion to Supplement”), ECF 127, and the Motion for Leave to Obtain Limited Discovery to Complete, or in the Alternative Supplement, the Record (“Motion for Discovery”), ECF 128; and (b) extend until March 14, 2025, the deadline for replies in support of those two motions. These extensions are needed to provide NDM/PLP, Defendants, and Intervenor-Defendants with sufficient time to brief the motions and also address the other matters that are pending in these cases.

The State of Alaska takes no position on this motion.

NDM/PLP joins in this motion and agrees to the proposed extensions to the briefing schedule for Plaintiffs and Defendants. NDM/PLP does not believe that Intervenor-Defendants are entitled to respond or should be permitted to respond to either of

¹ Among the plaintiffs, only NDM/PLP will be briefing issues related the Corps’ April 2024 Record of Decision, including the scope of the administrative record for that decision. Nonetheless, this motion includes Plaintiffs Iliamna Natives LTD. and Alaska Peninsula Corp. because the extensions sought here may affect deadlines related to other challenges in the consolidated cases. The State of Alaska takes no position on this motion and does not join.

NDM/PLP's pending motions, given that none of them has a cognizable interest in this case that is not being adequately represented by Defendants; given that the Court accordingly did not allow them unrestricted participation; and given that the Court postponed decision on whether to allow their involvement in discovery matters. To the extent that the Court is inclined to permit the Intervenor-Defendants to participate in the briefing of these motions, NDM/PLP requests that the Court require the three sets of Intervenor-Defendants to file one consolidated brief and coordinate with Defendants so that they do not present arguments already covered in Defendants' briefing.

Defendant-Intervenor SalmonState disagrees with NDM/PLP's position. All defendant-intervenor groups have been admitted as parties [Dkt. 95] and, as such, should be permitted to participate in briefing about the record that will form the basis for judicial review. *See* Dkt. ECF 127, 128. NDM attempted to place conditions on defendant-intervenor participation, including limiting participation in discovery, and the court denied that request. *See* Doc. 95 at 13. SalmonState intends to coordinate with the government and Defendant-Intervenors and reduce duplication in all briefings, as ordered by the Court [Dkt. 95]. NDM/PLP's request to limit Defendant-Intervenors' participation should be denied.

In support of this joint motion, Movants state further as follows.

1. On August 2, 2024, the United States Environmental Protection Agency ("EPA") filed a certified index to its administrative record with the Court regarding the January 2023 Final Determination of the U.S. Environmental Protection Agency Pursuant to Section 404(c) of the Clean Water Act [for the] Pebble Deposit Area, Southwest Alaska. ECF 87.

2. The Parties have been conferring in good faith to seek to resolve disputes related to potentially supplementing EPA's administrative record without engaging in contested motion practice. *See, e.g.*, ECF 126. That process is actively ongoing. Briefing on EPA's administrative record currently is stayed until January 15, 2025, to allow further time for negotiation, and a status report shall be filed by that date. ECF 131. EPA is hoping to file an updated record by that date.

3. On October 18, 2024, Defendants filed a certified index of the Corps' administrative record, ECF 112, and served that record on Plaintiffs. Thereafter, NDM/PLP and the Corps conferred regarding the scope of the Corps' record but were unable to reach agreement regarding potential supplementation.

4. On December 13, 2024, NDM/PLP filed the Motion to Supplement and the Motion for Discovery. Under the current schedule, responses to those motions are due January 31, 2025, and replies are due February 14, 2025. ECF 124.

5. Also on December 13, 2024, NDM/PLP served notice of four subpoenas for documents and testimony. *See* ECF 129, 130. The subpoenas have not yet been served on the persons subject to them, but potential objections and motions to quash are expected to be due in January or early February. *See* Fed.R.Civ.P. 45(d).

6. The extensions sought in this joint motion are appropriate and necessary to provide NDM/PLP, the Corps, and Intervenor-Defendants with the time needed to complete briefing of the Motion to Supplement and the Motion for Discovery, while also addressing issues related to EPA's administrative record and the four subpoenas recently

issued. The extensions are particularly appropriate in light of the upcoming holidays and previously scheduled vacations.

7. Accordingly, there is good cause to extend the deadlines to complete briefing of the Motion to Supplement and the Motion for Discovery, with oppositions due February 14, 2025, and replies due March 14, 2025.

8. A proposed order granting this joint motion is being filed herewith.

Respectfully submitted on December 20, 2024,

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division

S. LANE TUCKER
United States Attorney
District of Alaska

/s/ Elisabeth H. Carter
ELISABETH H. CARTER
United States Department of Justice - ENRD
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
Phone: (202) 598-3141
Email: elisabeth.carter@usdoj.gov

MARK A. NITCZYNSKI
United States Department of Justice - ENRD
Environmental Defense Section
999 18th Street; South Terrace, Suite 370
Denver, CO 80202
Phone: (303) 844-1498 (Nitzczynski)
Email: mark.nitzczynski@usdoj.gov

Attorneys for the United States

/s/ Keith Bradley
Keith Bradley, *pro hac vice*
ScheLeese Goudy, *pro hac vice*

SQUIRE PATTON BOGGS (US) LLP
717 17th Street, Suite 1825
Denver, CO 80202
Phone: (303) 830-1776
Email: keith.bradley@squirepb.com
Email: scheleese.goudy@squirepb.com

Jeffrey M. Walker, *pro hac vice*
Katherine E. Wenner, *pro hac vice*
SQUIRE PATTON BOGGS (US) LLP
2000 Huntington Center
41 South High Street
Columbus, OH 43215
Phone: (614) 365-2700
Email: jeffrey.walker@squirepb.com
Email: katherine.wenner@squirepb.com

Thomas P. Amodio
Kevin M. Boots
REEVES AMODIO, LLC
500 L Street, Suite 300
Anchorage, AK 99501
Phone: (907) 222-7100
Email: tom@reevesamodio.com
Email: kevin@reevesamodio.com

*Attorneys for Plaintiffs Northern Dynasty Minerals Ltd
and Pebble Limited Partnership*

/s/ Damien M. Schiff
DAMIEN M. SCHIFF, *pro hac vice*
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, CA 95814
Phone: (916) 419-7111
Email: DSchiff@pacificlegal.org

*Attorneys for Plaintiffs Iliamna Natives Ltd. and
Alaska Peninsula Corp.*

/s/ Paul A. Werner
Paul A. Werner (admitted pro hac vice)

SHEPPARD, MULLIN, RICHTER & HAMPTON
LLP

2099 Pennsylvania Avenue, NW, Suite 100

Washington, DC 20006-6801

Phone: (202) 747-1900

Email: pwerner@sheppardmullin.com

Lead Counsel for Trout Unlimited

/s/ Jeffrey M. Feldman

Jeffrey M. Feldman

(AK Bar No. 7605029)

SUMMIT LAW GROUP PLLC

315 Fifth Avenue South, Suite 1000

Seattle, WA 98104

Phone: (206) 676-7000

Email: jefff@summitlaw.com

Lead Counsel for the Bristol Bay Intervenors

/s/ Siobhan McIntyre

Siobhan McIntyre

(AK Bar No. 1206050)

TRUSTEES FOR ALASKA

121 W. Fireweed Ln., Suite 105

Anchorage, AK 99503

Phone: (907) 276-4244

Email: smcintyre@trustees.org

Lead Counsel for the SalmonState Intervenors